SELECT COMMITTEE ON THE OMBUDSMAN

SPECIAL REPORT

On the ways in which
The Assembly may act to
make its voice heard against
political killings, imprisonment,
terror and torture.

Third Session, Thirty-Second Parliament
32 Elizabeth II

Ontario

LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable John M. Turner
Speaker of the Legislative Assembly

April 1, 1983.

Sir,

We, the undersigned Members of the Select Committee on the Ombudsman have the honour to submit the attached report on ways in which the Assembly may act to make its voice heard against political killings, imprisonment, terror and torture, in accordance with the Order of the House, October 13, 1981.

ROBERT W. RUNCIMAN, M.P.P.
Chairman

ROBERT MACQUARRIE, Q.C., M.P.P.

ROBERT MITCHELL, M.P.P.

RENE PICHE, M.P.P.

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DAVID COOKE, M.P.P.

WILLIAM HODGSON, M.P.P.

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MEMBERS OF THE SELECT COMMITTEE

ON THE

OMBUDSMAN

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TONY LUPUSELLA, M.P.P.	Dovercourt

JOHN P. BELL	Counsel to the Committee
GRAHAM WHITE	Clerk of the Committee

The Committee wishes to acknowledge the contribution of the following current and former Members of the Legislature who served on the Committee during its consideration of political and human rights:

Margaret Campbell
Jim Gordon
Colin Isaacs
John Lane
Ross McClellan
Ed Philip
James Taylor
Osie Villeneuve
Robert Eaton
Ed Havrot
George Kerr
Patrick Lawlor
Gordon Miller
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INTRODUCTION

In its Ninth Report, the Committee commented upon its work respecting the Resolution of the House as follows:

"A. Resolution of the Legislative Assembly dated May 29th, 1980

> On the 29th of May, 1980, the Legislative Assembly passed a resolution put forward by Mr. James Renwick, Q.C., M.P.P.:
>
> "That this Assembly request the Select Committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists and others, if advisable, with a view to reporting to this Assembly on ways in which this Assembly may act to make its voice heard against political killings, imprisonment, terror and torture."
>
> The Committee in its eighth report advised the Assembly that it intended to meet with a number of other groups and individuals beyond the three mentioned in the resolution. However, the Committee's work in this regard was not complete when the Legislature was dissolved.
>
> The Committee is of the opinion that the work started by its predecessor committee should and must be completed to give full effect to the unanimous resolution passed by the House in May of 1980. The Committee concurs whole-heartedly with the resolution and with the work which the Committee had completed up to dissolution.
>
> Strictly speaking, the completion of the task outlined in this resolution is beyond the Committee's original terms of reference. For this reason it obtained approval of the Legislature on October 13, 1981 to complete the work of its predecessor committee."

The Committee reviewed the evidence presented to its predecessor and held further meetings in February, 1982. This report is based on all opinions, advice and documentation presented to the Committee since 1980.

From the outset, the Committee's approach to its work has reflected the themes running through the House Debate of May, 1980: a recognition that the evils of political killing, torture and imprisonment pervade the world; a strong sense that all persons fortunate enough to enjoy the benefits of a free, democratic society have an obligation to speak out and to exert their influence against such evils; uncertainty as to how the Legislative Assembly of Ontario could act only to "make its voice heard", but also to take effective action to set right these manifest wrongs; and concern as to the extent to which the Ontario Legislature can act on matters which occur in other countries.

These themes led the Committee to canvass a broad spectrum of opinion from those Canadian organizations and individuals knowledgeable and experienced in matters of international, human and political rights. They further prompted the Chairman of the Committee to write the Secretary of State for External Affairs seeking his guidance and support. Appendix "A" to this Report is the exchange of correspondence between the Chairman and the Secretary of State for External Affairs.

In addition to offering his written support the Federal Minister sent as his representative to the Committee a senior diplomat with extensive experience in human rights matters who strongly encouraged the Committee that its work was not only entirely proper, but extremely important and beneficial within the overall context of the Canadian federalism.

The following groups and individuals appeared before the Committee. The Committee wishes to acknowledge their assistance and to commend their dedication to the ideal of international political rights.

Amnesty International

Canadian Parliamentary Helsinki Group

Government of Canada, Department of External Affairs - Ambassador Yvon Beaulne, Canadian Ambassador to the Holy See and Canadian Representative on the United Nations Human Rights Commission

International Commission of Jurists (Canadian Section)

Interparliamentary Union

Inter-church Committee on Human Rights in Latin America

Patrick D. Lawlor, Q.C.

Cannon Borden Purcell, Chairman, Ontario Human Rights Commission

James A. Renwick, Q.C., M.P.P.

Professor Walter Tarnopolsky, Member, Canadian Human Rights Commission; Canadian Delegate to the United Nations Committee on Human Rights

Task Force on Churches and Corporate Responsibility

Early in its deliberations, the Committee conferred with the Ombudsman, who whole-heartedly supported the intent of the Resolution, but expressed the opinion that, owing to the limitations of his jurisdiction, he could not be of assistance to the Committee in this respect.

FINDINGS

No submission was put to the Committee more strongly, and more consistently than the position that the Legislature does have the right to take steps to make its voice heard on the matters contained in the Resolution. Some even went so far as to urge the Committee to conclude that the Legislature has a duty to act, particularly in view of Ontario's role in the ratification of the International Convenant on Civil and Political Rights.

The Committee has concluded that the Legislative Assembly does have authority in law to "act to make its voice heard against political killings, imprisonment, terror and torture.". It may in fact have a legal duty in so far as Ontario's participation in the ratification of United Nations covenants imposes obligations on it in the international field.

In the Committee's opinion the critical question is not whether the Legislative Assembly has the legal authority to act in this way. The critical question is now: what is the extent to which the Legislative Assembly can act. Put more directly, to what extent can the Legislative Assembly take any action intended to influence actions in a foreign jurisdiction which result in political killings, imprisonment, terror or torture.

In 1983, a year after the proclamation of Canada's new Constitution, the answer to this question is far from clear. On the one hand, there are those, relying

upon the "Labour Conventions" case (A.G. Canada vs A.G. Ontario (1937) A.C. 326), who maintain that the provinces have, through the vehicle of treaty making, some authority to become directly involved in the field of international affairs.

On the other hand is the apparent prevailing view, which certainly is held by the Federal Government, that the provinces cannot act directly and independently of the Government of Canada in this area. Historically, the provinces have conducted themselves substantially in accordance with this point of view.

A comparative analysis of these two positions will not lead to a resolution of the critical question. In the Committee's opinion, the resolution is found in a statement of the Premier in the Legislature on June 10, 1982. Although the context of his remarks is "Nuclear Disarmament" the principle enumerated is equally applicable to the issues raised by the Resolution.

> "Matters of foreign policy and matters of defence policy obviously do not fall within the constitutional responsibilities of the government of our province. Therefore, we have been, in the past, genuinely reticent to express explicit points of view in areas of international negotiations or foreign policy. Such matters are justifiably the responsibility of the government and Parliament of our nation.
>
> Nevertheless, there are certain issues that are so wide-reaching, and of such global significance, to each and every one of us, as human beings and as citizens of the world, that we have a responsibility to search our conscience and share with ourselves the things we care about the most."

This matter was also eloqently addressed by The Honourable R. Roy McMurtry at the Second Annual Anatoli Scharansky Lecture in Toronto, (June 6, 1982) when he re-affirmed the Government of Ontario's commitment that "we will

continue to promote international human rights and at every opportunity we will re-affirm our commitment to individual justice and the rule of law".

Certainly, the commitment of the Legislative Assembly of the Province of Ontario can be no less than the commitment of the Government of Ontario as articulated by the Premier and the Attorney General.

The remarks of the Premier and the Attorney General clearly support the point of view repeatedly expressed to the Committee by the witnesses who appeared before it: the Province of Ontario, provided it operates within the "proper channels", that is, through the Government of Canada, has a clear and necessary role to play in dealing with matters such as political killings, imprisonment, terror or torture.

It may come as a surprise to some Members that senior representatives of Canada in the field of foreign affairs have not only acknowledged such a role for Ontario but have encouraged such involvement without further delay.

THE NEED FOR A PERMANENT MECHANISM

The Committee has concluded that, in order for the Legislature to ensure that its commitment to the spirit of the Resolution be fulfilled, there must exist a vehicle, capable of acting quickly, which could bring appropriate matters to the Legislature's attention on a continuing basis, and which could offer advice and recommendations on appropriate courses of action. Thus, the question of the extent to which the Legislature can act will be continuously reviewed.

The suggestion most frequently made to this Committee on how this goal might be achieved, was that a permanent committee of the Legislature be charged with overseeing human and political rights, with particular emphasis on political torture, imprisonment and killing. Proposals as to the precise nature and structure of this committee varied: some suggested that the Select Committee on the Ombudsman should assume these responsibilities; others were in favour of creating a new Standing Committee, and one proposal was for a special Speaker's committee with unique mandate and powers. Agreement was general, however, that the Assembly required some mechanism for maintaining a watching brief on international human and political rights, and for advising the Assembly on specific action it might take.

The Committee has concluded that, while the creation of a new permanent committee of the Legislature is the desirable vehicle, it is, at least for the present, not practical so to do.

The best alternative in the circumstances is that this Committee's order of reference be expanded to permit it to serve the Legislature as the "permanent vehicle". Of all existing Committees it is most suitable in that:

(a) this Committee already has the relevant background and experience as a result of its work leading to this report;

(b) the general subject matter has parallels to the concept of the Ombudsman;

(c) this Committee has in place staff qualified to undertake the ongoing work necessary to fulfil the expanded terms of reference;

(d) generally this Committee has functioned on a non-partisan basis, an approach which must prevail with any Committee charged with these responsibilities.

HOW THE LEGISLATURE CAN ACT

At this stage, it is impossible to delineate with any certainty all of the ways which the Legislative Assembly can act to "make its voice heard". In the final analysis those ways can only really be developed after the Legislature and the Committee has had actual involvement in specific cases.

In any event, however, to ensure that the Legislative Assembly is able to effectively act in this area it will be necessary for the Committee to develop resources and a pool of expertise upon which the Legislature can draw in evaluating the most appropriate course of action in any given case.

To fulfil this requirement, the Committee intends to establish formal relationshps with knowledgeable persons in the Department of External Affairs, the Ministry of Inter-Governmental Affairs and the relevant Committees fo the Parliament of Canada and the United Nations. Formal relationships will also be established with certain appropriate non-governmental organizations which actively work to promote human and political rights in the world such as Amnesty International, International Commission of Jurists, and the Interparliamentary Union.

These formal relationships will serve to establish a "presence" of the Legislative Assembly in the area of world human rights. It will also ensure that the Committee is kept continously informed of significant, specific crises as well as longer term developments in this field.

It is, of course, the Committee's intention that these relationships will be established in the name of the Legislative Assembly of the Province of Ontario as one of the ways in which the Assembly can "make its voice heard". The Legislative Assembly will be thereby continuously involved in world human rights.

The Committee foresees its role on behalf of the Assembly to consist of the following:

(a) notification from any source, including a member of the Legislative Assembly, of circumstances in the world where it is alleged human or political rights are violated;

(b) consideration of the circumstances surrounding the alleged violation;

(c) deliberation upon an appropriate course of action to be adopted by the Legislative Assembly;

(d) report to the Assembly with recommendations.

The Committee also intends to monitor responses to actions taken by the Legislature and in turn report regularly thereon together with any recommendations for further action by the Legislature.

Without in any way restricting the generality of the types of actions which the Legislative Assembly might take upon a recommendation from the Committee, or on its own, the following is a partial list of proposals for action by the Assembly which has been put to the Committee by those who have appeared before it:

(a) the passage of formal resolutions by the Assembly expressing general support for human and political rights and condemning particular cases of repression and political violence;

(b) with respect to individual cases, the passage of resolutions specifically deploring the suppression of the human and political rights of parliamentaries throughout the world and relatives of Ontario residents;

(c) reviewing and improving conditions for persons who have come to Canada as political refugees;

(d) promoting of ratification by Ontario of the United Nations draft code of conduct for law enforcement officials;

(e) assisting non-governmental organizations financially or through the secondment of legislative staff;

(f) promoting the review and strengthening of Canadian legislation on political terrorism;

(g) organizing and participating in conferences of Canadian legislators on the subject of world human rights;

(h) participating, as part of Canadian delegations, in international meetings on human rights;

(i) promoting sanctions against jurisdictions which engage in political torture, imprisonment and killing;

(j) reviewing educational policies and practices in Ontario designed to foster an understanding and appreciations of fundamental human and political rights.

The Committee has not yet decided whether any or all of these possible courses of action are appropriate. Those decisions can only be taken after the Committee has gained further insight and experience and has studied the appropriateness of each course of action in the context of specific human rights violations.

The Committee wishes to assure the Members of the Legislature that, except for establishing relationships with governmental and non-governmental agencies as discussed above, it will not on any matter of world human rights act on its own accord. Its function is purely that of agent of the Legislature.

The Committee also wishes to assure the Legislative Assembly that it does not propose that to include within its mandate issues of "domestic" human rights, for example, alleged violations of the Ontario Human Rights Code. There are already in place in Ontario the mechanisms to deal with those issues.

Finally, the Committee wishes to emphasize that it is mindful of its limitations. The Committee does not expect to be meeting weekly on human rights matters, but rather to meet from time to time to review general matters related to its mandate and to be ready to deal quickly with specific allegations of violations of human rights elsewhere in the world. Certainly the Committee will not let its concerns with international political rights interfere with its responsibility of reviewing the reports of the Ombudsman and of reporting to the Assembly on these reports and related matters.

RECOMMENDATION

The Committee recommends that ITS ORDER OF REFERENCE BE EXPANDED AS FOLLOWS:

> "THE COMMITTEE SHALL, WHEN IT CONSIDERS IT NECESSARY, CONSIDER, REVIEW, REPORT AND RECOMMEND TO THE LEGISLATURE ON WAYS IN WHICH THE ASSEMBLY CAN ACT TO OPPOSE AND CONDEMN ACTS OF POLITICAL KILLINGS, IMPRISONMENT, TERROR AND TORTURE AND ANY OTHER ACTS WHICH MAY BE INCLUDED IN ANY COVENANT OR DOCUMENT TO WHICH CANADA IS OR MAY BECOME A SIGNATORY; AND, IN PARTICULAR, THE COMMITTEE SHALL HAVE THE POWER TO CONSULT WITH, AND IF DEEMED APPROPRIATE, ESTABLISH FORMAL RELATIONSHIPS WITH, AND PROVIDE ACTUAL SUPPORT TO GOVERNMENT AND NON-GOVERNMENTAL ORGANIZATIONS WHOSE AIMS AND OBJECTIVES ARE DEDICATED TO THE ELIMINATION OF THE KINDS OF ACTS MENTIONED ABOVE.
>
> THE COMMITTEE SHALL FURTHER HAVE THE POWER TO RECEIVE, CONSIDER AND REVIEW SPECIFIC EXAMPLES OF THE KINDS OF ACTIONS HEREIN MENTIONED AND, IF DEEMED ADVISABLE, TO REPORT THEREON TO THE LEGISLATURE WITH ANY RECOMMENDATIONS FOR ACTIONS WHICH THE LEGISLATURE MIGHT TAKE; AND PURSUANT TO THE ABOVE, THE COMMITTEE SHALL HAVE THE POWER TO SIT CONCURRENTLY WITH THE HOUSE AT SUCH TIMES AS IT CONSIDERS NECESSARY AND APPROPRIATE."

The Committee was concerned that the recommendations it proposed to the Assembly be more than hollow posturing and pious but ineffective words. For if the resolution of the Assembly specifically enjoined the Committee to advise it on ways "to make its voice heard", the implication was clear that the ultimate objective was not merely the expression of the Legislature's opinion but tangible improvement in the lot of persons whose human and political rights are being involved. In short, the Committee seeks results not gestures.

After reviewing the evidence presented by individuals and groups with a great deal of experience in cases of political imprisonment, torture and killing, the Committee has concluded that the Legislative Assembly of Ontario can indeed be an effective force against these evils. The Committee is under no illusions that the overall results will not be slight and the process slow, difficult and frustrating. Yet time and again the Committee was shown that publicity, political pressure, even personal appeals have achieved surprisingly positive results. To be sure, certain repressive regimes are entirely impervious to any sort of publicity or pressure; yet many others have demonstrated that they are sensitive to world public opinion and adverse publicity. Moreover, such countries may take the absence of criticism of their violation of human and political rights as tacit approval of their practices. Finally, as the Committee was told by a former victim who had been released from custody because of the intervention of concerned individuals throughout the world, the support and concern of complete strangers can be a powerful psychological boost for the victims of political torture and imprisonment.

Clearly, the passage of a resolution in the Ontario Legislature condemning human rights violations in certain countries will not magically result in the cessation of torture and the release of political prisoners. The evidence is clear, however, that such action is an important element in eventually improving general conditions or righting individual wrongs. Formal steps by the Assembly in these matters are particularly significant; the expression of opinion by freely-elected and democratically responsive members of the Legislative Assembly is an especially clear and powerful signal of popular concern over human rights violations.

The Assembly cannot turn its back on the limited yet very real potential to help those suffering from political torture and imprisonment. Truly, in the words of Edmund Burke,

> "the only way evil will ever dominate is if good men do nothing."

APPENDIX "A"

July 3, 1980

The Honourable Mr. Mark MacGuigan
Minister
External Affairs Department
Lester B. Pearson Building
125 Sussex Drive
OTTAWA, Ontario K1A 0G2

Dear Mr. Minister:

Re: Universal Political Rights

On the 29th of May, 1980, the Legislature concurred in a Resolution moved by Mr. Renwick:

> "That this assembly request the select committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists and others, if advisable, with a view to reporting to this assembly on ways in which this assembly may act to make its voice heard against political killings, imprisonment, teror and torture".

I enclose a copy of the Hansard Debates of that motion as well as a copy of the deliberations of the Select Committee on the Ombudsman on July 2nd, 1980 wherein preliminary discussions respecting the resolution took place.

My purpose in writing to you is two-fold. First, to inform you of this step taken by the Legislature of the Province of Ontario in the area of Human Rights. Secondly, to invite any comments which you and your Ministry feel are appropriate and which may assist the Committee in its deliberations.

. . .2/

The Committee has decided to invite the Canadian Representative on the United Nations Commission on Human Rights, Mr. Yvon Beaulne, to appear before it sometime this fall. It is intended that Mr. Beaulne, who is an official of your Ministry, may offer some suggestions, in his capacity as representative on that Commission, as to how the Legislative Assembly of the Province of Ontario may act to "make its voice heard".

Since Mr. Beaulne is an official of your Ministry, the Committee wished to advise you in advance of its intention and to seek any comments or suggestions you may have in that regard.

Yours very truly,

PDL/jb
Encls.

PATRICK D. LAWLOR, Q.C., M.P.P.
Chairman
Select Committee on the
Ombudsman

The Secretary of State for External Affairs

Canada

Secrétaire d'État aux Affaires extérieures

OTTAWA, K1A 0G2

July 22, 1980

Dear Mr. Pat Lawlor,

Thank you for writing on July 3 to inform me of the Legislature's Resolution of May 29 concerning the means available for indicating support for major human rights bodies such as the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists. In this regard I welcome the proposal to invite Canada's representative to the United Nations Commission on Human Rights, Mr. Yvon Beaulne to meet with the Select Committee on the Ombudsman. He has, of course, heavy responsibilities both as Ambassador to the Vatican and as representative of Canada on the U.N. Commission. However, there is a good possibility that Mr. Beaulne will be in Canada for a brief period during the fall and may be able to meet with you. I have asked my office to be in touch with you closer to the time about this. If by chance the Committee's schedule and that of Ambassador Beaulne cannot be reconciled, I would be pleased to ask one of my officials directly concerned with human rights questions to meet with you.

With regards to Amnesty International and the International Commission of Jurists, I have encouraged closer contacts with those organizations by my Department and I appreciate why the Legislature would want to indicate to them its support for the important work they do in the human rights field. I am sure that the Select Committee will be developing such contacts.

.../2

Mr. Patrick D. Lawlor, Q.C., M.P.P.
Chairman
Select Committee on the Ombudsman
Room 110
Main Parliament Building
Queen's Park
Toronto, Ontario
M7A 1A2

I noted with interest the debate on the motion, including your own comments. You will be interested to know that Canada plays a significant role in the protection and promotion of international human rights, both in international fora and in our bilateral relations with other countries. Canada is represented on all the major international human rights bodies including of course, the U.N. Commission on Human Rights, and indeed Mr. Beaulne was chairman of the annual Commission meeting in 1979. We have sponsored and actively supported resolutions in the United Nations and elsewhere to develop effective international mechanisms to deal with human rights situations and to encourage universal adherence and closer compliance with them. Mr. Beaulne is eminently qualified to brief the Select Committee on Canada's activities in this field.

Yours sincerely,

Mark MacGuigan